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THE ANDHRA PRADESH GAZETTE

PART–II EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 198] **HYDERABAD, FRIDAY, NOVEMBER 19, 2010.**

NOTIFICATIONS BY HEADS OF DEPARTMENTS, Etc.

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COMMISSIONER OF COMMERCIAL TAXES

SRI. M. JAYARAJ KUMAR, C.T.O , VIZIANAGARAM DIVISION , FILED O.A. NO. 4454/2010 BEFORE A.P.A.T - NOTIONAL DATE OF SENIORITY TO THE APPLICANT FOR THE PANEL YEAR 2005-06 AS C.T.O ON PAR WITH JUNIOR SRI. ABISHEKHAM WITH EFFECT FROM 05.06.2006 - A.P.A.T. ISSUED FINAL ORDERS - PROPOSED TO ASSIGN NOTIONAL DATE OF PROMOTION - OBJECTIONS CALLED FOR -SHOW CAUSE NOTICE.

Reg :-
1. Government vide Memo. No.63488/Vig.I (1)/2002-1, dated: 22.11.2002.
2. CCT's Ref.No.VII/908/2002, dt: 23.06.2006.
3. Hon'ble A.P.A.T in O.A. No.,6584 of 2006 dated: 08.02.2007.
4. Hon'ble High Court in W.P.No.15121 of 2007, dated: 21.07.2008.
5. CCT's Ref.No.D2/1703/2006, dated: 04.03.2009.
6. Govt.Memo.No.57860/CT-I/l/2006, dated: 18.04.2009.
7. Proceedings of the DPC, dt; 14.05.2009.
8. CCT's Ref.D2/1703/2006, dated:02-09-2010.

CCT'S ref. No. D2/1703/2006.- In the reference 1st cited, the Government have informed that a case has been registered against Sri M. Jayaraj Kumar, DCTO on allegations of possessing assets disproportionate to the known source of income. Consequent to the above proceedings, Sri M. Jayaraj Kumar, DCTO was placed under suspension vide CCT's prodgs. dt. 26-11-2002.

While Sri M. Jayaraj Kumar was under suspension, the DPC meetings were held on 18.8.2004 and 12.1.2005 for approving the panel of the DCTOs fit for promotion as Commercial Tax Officers for the panel year 2003-04 & 2004-05 respectively. The DPC has not considered the name of Sri M. Jayaraj Kumar, DCTO as he was under suspension and since a case was registered against him for possessing assets disproportionate to the known source of his income by the ACB. The officer subsequently was reinstated into service on 25.05.2005, without prejudice to the disciplinary proceedings pending against him.

Sri M. Jayaraj Kumar has filed 0,A. 6010/2005 before the Hon'ble APAT. for considering his promotion. The APAT has issued interim orders on 7.10.2005 as follows.

" The respondents are directed to consider the case of the applicant for promotion to the post of Commercial Tax Officer, in the existing or future vacancies, pending further orders in the O.A."

On the above orders of the APAT, Department has filed VMA No. 37/2006 in OA. No. 6010/2005. The Hon'ble APAT directed the respondents in its orders dt.06.01.2006 as follows:

" The respondents are directed to consider the case of applicant for promotion to the post of C.T.O. in the existing or future vacancy, in terms of G.O.Ms.No. 257, GAD(Services-C) Dept. Dt. 10-6-99, according to his turn and in accordance with the rules"

In the light of the above orders of the Hon'ble APAT, the name of Sri M. Jayaraj Kumar, DCTO was considered in the DPC held on 20-3-06 to review the cases of those who were not considered during the panel year 2004-05 and those who were included in the seniority list due to the revision of seniority.

The DPC has taken the following decision in respect of Sri Jayaraj Kumar,

" ***** In view of the above directions of the Hon'ble APAT the case of Sri Jayaraj Kumar, DCTO is considered for promotion as Commercial Tax Officer, but deferred as the case booked by the ACB is still pending"

Again in the DPC held on 05.06.2006 for drawing the panel of DCTO for the promotion to the cadre of CTOs for the panel year 2005-06, the name of the officer was considered but passed over due to the pendency of the ACB case.

In the meantime charges were framed against the officer vide reference CCT's Ref. No. VII/908/2002, dt 23.6.2006 and Charge Memo was issued under rule 20 of A.P.C.S.(C.C.A) Rules, 1991.

The Hon'ble A.P.A.T. in its final orders, dt.27-6-06 in O.A. 6010/2005 has disposed the O.A. with the following directions:

"Under the facts and circumstances, the respondents are hereby directed to consider the case of the applicant for promotion to the post of Commercial Tax Officer without reference to the ACB case registered against the applicant. However, it is made clear that any promotion made would be subject to any further development in the case registered by the ACB authorities. The OA is disposed of accordingly. In view of the orders passed in the O.A., no further orders are necessary in VMA. There will be no order as to costs."

In compliance to the orders of the Hon'ble A.P.A.T. the name of the officer was placed before the review D.P.C. on 2-9-2006. The D.P.C. has reviewed the matter and taken a decision as mentioned here under:

"The matter has been reviewed by the DPC and considered for inclusion of his name in the adhoc panel of 2005-06 but to defer promotion in terms of G.O.Ms.No. 257, GAD Dept. Dt. 10-6-1999 since the disciplinary proceedings initiated against the individual duly framing charges vide CCT's ref. No. VII/908/2002. Dt. 23-6-2006 are pending."

Aggrieved by the above, the officer has again filed an O.A. No. 6584 of 2006 . The Hon'ble A.P.A.T. in its final orders in O.A. NO. 6584 of 2006, Dt.8-2-07 has directed the following:

"The guidelines issued to the Departmental Promotion Committee vide G.O.Ms. No. 187, dt.25.4.1985 clearly lay down that review DPC should restrict its scrutiny to the confidential reports for the period relevant to the first DPC. That being so, in the instant case, the review DPC should have restricted its scope to the events up to the date of the first DPC and should not have taken into consideration the subsequent events. The learned counsel for the applicant is, therefore right in contending that the review DPC, having included the name of the applicant in the adhoc panel of DCTOs fit for promotion to the post of CTO for the panel year 2005-06 cannot defer the promotion of the applicant on the ground that the charge sheet is pending against the applicant.

Under the facts and circumstances, it is hereby held that the action of the respondents in deferring the promotion of the applicant, having included the name of the applicant in the panel for the promotion to the post of CTO for the panel year 2005-06, is discriminatorily and illegal. The respondents are , therefore, directed to promote the applicant to the post of CTO in terms of the review DPC. How ever, this order does not preclude the respondents to reconsider the case of the applicant as per the final disposal of the charge memo dated. 23.6.2006."

Against the above orders of the Hon'ble Tribunal the department has filed the W.P.No. 15121 of 2007 along with W.P.M.P. No. 19048 of 2007. The Hon'ble High Court in interim orders dt. 17.7.2007 has suspended the directions of the Hon'ble A.P.A.T with regard to the directions to promote the respondent to the post of CTO in

terms of the review DPC. But in its final orders dt.21.07.2008 (received certified copy on 18.08.2008), the Hon'ble Court has dismissed the W.P. with the following directions:

"Considering the material placed before us and keeping in view the judgment rendered by the Apex Court in SUDHA SALHAN (case 3 supra), we are of the opinion that the Tribunal rightly held that the action of the petitioners in deferring the promotion of the respondent, having included his name in the panel for promotion to the post of Commercial Tax officer for the panel year 2005-06, is discriminatory and illegal, and so the direction given by the Tribunal to the petitioners to promote the respondent to the post of Commercial Tax Officer in terms of the review DPC making it clear that the order does not preclude the petitioners to re-consider the case of the respondent as per the charge memo dt. 23.6.2006 cannot be found fault with.

In the facts and circumstances of the case, the finding arrived at by the Tribunal does not suffer from any illegality whatsoever warranting interference of this court and so we do not find any merit in the Writ petition.

Accordingly, the writ petition is dismissed. No order as to cost."

In view of the above, orders of the Hon'ble High Court, the orders of the Hon'ble A.P.A.T. in O.A. No. 6584/ 2006. dt. 8.2.2007 comes in to force. According to the orders of the Hon'ble APAT in this OA, the respondents are directed to promote the applicant to the post of CTO in terms of the review DPC without precluding the respondents to reconsider the case of the applicant as per the final disposal of the Charge Memo dt. 23.06.2006.

The matter has been examined in detail and it has been decided to implement the orders of the Hon'ble High Court and the Hon'ble A.P.A.T. but in view of the fact that the Election Commission of India had announced the General Election schedule on 2.3.2009 and the Election Code came into immediate effect, a clarification was sought from the Government in CCTs Ref. No. D2/1703/2006, Dt. 4 -03-2009, that when the Election Code is in force, whether Sri M. Jayaraj Kumar, Deputy Commercial Tax Officer can be promoted to the post of Commercial Tax Officer as per the orders of the Hon'ble Tribunal and Hon'ble High Court as detailed above.

In the reference 6th cited, the Government with the concurrence of the Election Commission, has issued the clarification that there is no objection to take necessary action on the orders of the Hon'ble Tribunal in OA. No. 6584/2006 and Hon'ble High Court in W.P.No.15121/2007. dt. 21.07.2008 filed by Sri M. Jayaraj Kumar, Deputy Commercial Tax Officer,

Therefore, in pursuance of the orders of the Hon'ble High Court in W.P.No. 15121 of 2007, dt 21-07-2008 and Hon'ble APAT in O.A. No. 6584 of 2006. dt. 8.2.2007, Sri Jayaraj Kumar had to be promoted in terms of the review DPC held on 02.09.06. Whereas in the said meeting the DPC took a decision to consider for inclusion of his name in the adhoc panel of 2005-06 but to defer promotion in terms of G.O.Ms.No. 257, GAD Dept., Dt. 10-6-1999 since the disciplinary proceedings initiated against the individual duly framing charges vide CCTs ref. No. VII/908/2002. Dt. 23-6-2006 are pending.

As per the Hon'ble Courts' orders, he has to be promoted though charges are pending against him, therefore, the decision of the review DPC dt. 2.9.06 has to be revised in order to implement the Hon'ble Courts Orders.

Further, the individual is otherwise eligible for the promotion from the post of DCTO to the post of CTO, in terms of seniority, qualification, qualifying years of service and Annual Confidential Reports.

In view of the above, it has been decided to place the above matter before DPC to review the decision of the DPC which was held on 02.09.2006 for reviewing the case of Sri Jayaraj Kumar, Deputy Commercial Tax officer for inclusion of his name in the adhoc panel of 2005-06 and for giving temporary promotion as Commercial Tax Officer subject to finalization of the criminal case filed by the ACB and finalization of disciplinary case pending against him in terms of the orders of the Hon'ble High Court in W.P.No. 15121 of 2007, dt 21-07-2008 and Hon'ble APAT in O.A. No. 6584 of 2006. dt. 8.2.2007.

The matter has been reviewed by the DPC and took a decision in the meeting held on 14.05.2009 to review the decision of the DPC which was held on 02.09.2006 and in the reference 7th cited decided to include the name of Sri Jayaraj Kumar in the adhoc panel DCTOs fit for promotion to the post of CTO for the year 2005-06 and for giving temporary promotion as Commercial Tax Officer subject to finalization of the criminal case filed by the ACB and finalization of disciplinary case pending against him in terms of the orders of the Hon'ble High Court in W.P.No. 15121 of 2007, dt 21-07-2008. and Hon'ble APAT in O.A. No. 6584 of 2006. dt. 8.2.2007.

Therefore, in pursuance of the orders of the Hon'ble High Court in W.P.No. 15121 of 2007, dt 21-07-2008 and Hon'ble APAT in O.A. No. 6584 of 2006. dt. 8.2.2007, and clarification of the Government in the reference 6th cited, under Rule 10(a) of Andhra Pradesh State and Subordinate Service Rules, 1996, Sri M. Jayaraj Kumar, DCTO (Revisions), O/o. the Appellate Deputy Commissioner (CT), Vishakapatnam Division who was included in the adhoc panel of DCTOs fit for promotion for the post of CTO for the year 2005-06 was temporarily promoted as Commercial Tax Officer in the Andhra Pradesh Commercial Taxes Services Vide CCT's Ref.No. D2/1703/2006, dated: 15.05.2009 in the scale of pay of Rs. 10845-280-11125-315-12700-330-13030-360-13750-425-15025-475-16925-550-19675-625-22800-700-25600 with usual allowances admissible from time to time from the date of taking charge.

The individual, who is temporarily promoted as Commercial Tax Officer has been temporarily posted as Commercial Tax Officer and now he is working as Commercial Tax Officer, Vizianagaram (South), Vizianagaram division.

Furtherr, Sri. Jayaraj Kumar, Commercial Tax Officer has filed O.A.No.4454 of 2010 to assign Notional date of seniority in the Panel Year 2005-06 in the cadre of Commercial Tax Officer with all consequential benefits. The Hon'ble A.P.A.T issued orders dated: 11.08.2010 in O.A. No. 4454 of 2010 as follows:

"the impugned order in proceedings CCT's Ref.No. D2/1703/2006, dated: 05.03.2010 issued by the 1st respondent is liable to be set aside and is accordingly set aside. The respondents are directed to assign notional date of seniority to the applicant for the panel year 2005-06 as Commercial Tax Officer on par with his Junior Sri. Abhishekham from 05.06.2006 with all consequential benefits and pass appropriate orders with in a period of 4 weeks from the date of receipt of order. The O.A. is disposed of accordingly with the above directions. No Costs."

In view of the above the Government was requested in the reference 8th cited to assign notional date of seniority to Sri M. Jayaraj Kumar, Commercial Tax Officer, Vizianagaram (South), Vizianagaram division in the panel of Commercial Tax Officers for the year 2005-06 with effect from the date of adhoc promotion of his junior Sri Abhishekam i.e. on 5-6-2006 with all consequential benefits as per the orders of Hon'ble A.P.A.T. in O.A.No.4454/ 2010 dated 11-08-2010.

The Government in the reference 9th cited have requested to examine the orders of the Hon'ble APAT in O.A.No.4454/2010 and take further necessary action for assigning notional seniority to Sri M.Jayaraj Kumar in the cadre of Commercial Tax Officer on par with his junior Sri Abhishekam duly following the rules by issuing Show Cause Notice to the persons likely to be effected calling objections , if any , and after disposing off the same, send proposals if necessary, to Government for relaxation of Rule 33(a) of A.P.S.& S.S.Rules,1996.

As per the above instructions of the Government it is decided to assign notional date of seniority to Sri M. Jayaraj Kumar, Commercial Tax Officer, Vizianagaram(South), Vizianagaram division in the panel of Commercial Tax Officers on par with his junior Sri Abhishekam i.e., on 05-06-2006.

The persons who are affected by this proposed inclusion may file their written statement of objections if any within (15) days of publications of this notice A.P. Gazette falling which, it would be construed that they have no objections to the proposed seniority and orders deemed fit will be passed without further notice and time.

A copy to the show cause notice is available on the internet and can be accessed at the address. www.apcommercialtaxes.qov.in.

Hyderabad,
23-10-2010.

SURESH CHANDA,
Commissioner of Commercial Taxes.

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